

IN THE COURT OF APPEALS OF MARYLAND

September Term, 2014

Petition Docket No. 0558

MARYLAND DEPARTMENT OF STATE POLICE,

Petitioner/Cross-Respondent,

vs.

TELETA DASHIELL,

Respondent/Cross-Petitioner.

**RESPONDENT/CROSS-PETITIONER'S ANSWER TO
PETITION FOR WRIT OF CERTIORARI AND
CROSS-PETITION FOR WRIT OF CERTIORARI**

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Respondent and Cross-Petitioner Teleta Dashiell respectfully submits this Answer and Cross-Petition. The Answer responds to the petition for writ of certiorari of Petitioner/Cross-Respondent Maryland Department of State Police (“MSP”), for review of the Court of Special Appeals’ reported decision below.¹ The Cross-Petition seeks review of one aspect of that decision.

ANSWER TO PETITION

The MSP’s Petition seeks review of the Court of Special Appeal’s reversal of the Circuit Court’s ruling that any and all records pertaining to Ms. Dashiell’s complaint were exempt from disclosure as “personnel records.” The Court of Special Appeals concluded that the trial court erred in this determination, because disclosure of these records is not categorically prohibited by either the Maryland Public Information Act’s (“MPIA” or “the Act”) personnel records exemption or the Law Enforcement Officer’s Bill of Rights (“LEOBR”). (App. at 15-28). Accordingly, the Court of Special Appeals remanded the case to the trial court, ruling that the MSP must identify the documents it is withholding from Ms. Dashiell in order to allow some inquiry into the propriety of the withholding and MSP’s claims that no portions are severable. Contrary to MSP’s

¹ *Teleta Dashiell v. Maryland State Police Department*, No. 1078, September Term, 2011 (filed Oct. 8, 2014; mandate issued Nov. 7, 2014). Copies of the following documents are included in the Appendix attached to this Answer and Cross-Petition: the decision of the Court of Special Appeals; the docket entries evidencing the judgment of the Circuit Court granting summary judgment in favor of Petitioner/Cross-Respondent; the transcript of the June 24 2011 hearing on the Petitioner/Cross-Respondent’s Motion to Dismiss or in the Alternative for Summary Judgment; and the Circuit Court for Baltimore County’s June 27, 2011 order memorializing its ruling from the bench. References to “App. ____” are to that Appendix. The judgment of the Circuit Court adjudicated all claims in the action in their entirety and the rights and liabilities of the parties.

characterization, the Court of Special Appeals' decision worked no dramatic change to the law in treating records of internal affairs investigations as severable and subject to inspection. The Court of Special Appeals' ruling was a narrow one that correctly applied existing law to MSP's blanket refusal to provide any information about the records being withheld from Ms. Dashiell.

Nonetheless, Ms. Dashiell does not oppose the Petition because a determination by this Court will clarify a critical question of great public interest: the extent of the public's right to information concerning proven police misconduct. This question is particularly important in light of current events and debate about the transparency and accountability of police and how to restore public trust where it has been corroded by police misconduct.

An expeditious and final determination of these issues will benefit Ms. Dashiell, who has waited nearly five years for the records pertaining to her complaint. It will also significantly impact the right of every Maryland citizen to information concerning proven police misconduct and how police "police" themselves in such cases.

CROSS-PETITION

QUESTION PRESENTED ON CROSS-PETITION

As framed by the Court of Special Appeals in its decision below (App. at 14), the question presented is the one this Court reserved in *Mayor of Balt. v. Md. Comm. Against Gun Ban*, 329 Md. 78, 90 (1993) ("*Gun Ban I*"): "whether a complaining victim . . . may be considered the subject of an investigation" such that she is a "person in interest" under the MPIA?

PERTINENT STATUTORY PROVISIONS

Md. Code Ann., State Gov't §§ 10-611(e)(1) and 618(f)(2).

STATEMENT OF THE CASE

The requested records in this case relate to a complaint filed by an African-American woman, Ms. Dashiell, against MSP Sergeant John Maiello for a racial slur he directed at her in a message he left on her telephone voicemail on November 5, 2009. (App. at 3). Sgt. Maiello, who believed that Ms. Dashiell could be a witness in a case he was investigating, telephoned Ms. Dashiell, left a message asking her to call him back and, believing he had hung up, was recorded disparaging Ms. Dashiell as “some God dang nigger.” (App. at 3).

Upon Ms. Dashiell's 2009 complaint, MSP conducted an investigation, sustained her complaint, and took some undisclosed disciplinary action against Sgt. Maiello. (App. at 3). This proceeding arises from Ms. Dashiell's subsequent MPIA request for records relating to the investigation, and MSP's blanket denial of this request and refusal to produce even an index of documents it was withholding. (App. at 3-5). More than five years have passed, but MSP still has not permitted Ms. Dashiell to inspect a single document in the investigation records – not even her *own* statement to the MSP – nor has it produced an index of the withheld documents.

The Court of Special Appeals reversed the Circuit Court's ruling that the requested records were exempt from disclosure as “personnel records,” and concluded that the records were not categorically exempt from disclosure under the LEOBR or the MPIA. (App. at 15-28). The Court, however, citing to this Court's opinion in *Mayor of*

Balt. v. Md. Comm. Against Gun Ban, 329 Md. 78, 90 (1993) and its own subsequent decision in *Biscoe v. Mayor of Baltimore*, 100 Md. App. 124 (1994), held that Ms. Dashiell is not an “interested person” under the MPIA. (App. at 12-15).

REASONS FOR GRANTING REVIEW OF CROSS-PETITION

Ms. Dashiell respectfully disagrees with the Court of Special Appeals’ ruling that she is not a “person in interest” under the MPIA with respect to the investigation into her own sustained complaint.² The MPIA defines “person in interest,” in relevant part, as “a person . . . that is the subject of a public record” Md. Code State Gov’t § 10-611(e)(1). The investigation in this case centered on a racially derogatory message of which Ms. Dashiell was the subject. But for this derogatory message and Ms. Dashiell’s substantiated complaint about it, the investigation would not exist. Ms. Dashiell is the victim of the misconduct investigated and the complainant who brought it to the attention of MSP. She, and she alone, suffers a clear and specific set of harms by being denied access to the documents arising from her complaint. She therefore should be considered a “person in interest” within the meaning of the MPIA as the subject of the documents pertaining to the investigation of her substantiated complaint.

² As the Court of Special Appeals noted, “[t]he significance of this initial determination is that the agency must make a heightened showing in order to deny inspection to a ‘person in interest’ relative to a member of the general public. *Compare* SG § 10-616(i)(1) (requiring denial of inspection of personnel records) *with* SG § 10-616(i)(2) (requiring granting of inspection to ‘the person in interest’). *See also* *Gun Ban II*, 329 Md. at 96-97 (explaining that denying inspection under SG § 10-618(f)(2) to ‘the person in interest’ is only permissible based on seven enumerated circumstances, whereas § 10-618(f)(1) only requires showing that ‘inspection would be contrary to the public interest’).”

Whether a complainant is a “person in interest” under § 10-618(f)(2) is a question specifically left open by this Court in *Gun Ban II*. This Court there held that a political committee was not a “person in interest” because it was not the subject of the requested public record. *Id.* at 90. The committee in *Gun Ban II*, unlike Ms. Dashiell, however, was not the complainant, and this Court specifically declined to opine whether a complainant such as Ms. Dashiell could be a “person in interest” under § 10-618(f)(2). *Id.* at 90.

The Court of Special Appeals in *Briscoe v. Mayor and City Council of Baltimore*, 100 Md. App. 124 (1994), arguably extended the holding of *Gun Ban II*, by concluding that even a complainant could not qualify as a “person in interest” under the MPIA. However, the Court of Special Appeals did so in the context of “not sustained” allegations and a binding holding by this Court that, in any event, release of such records would be contrary to the public interest. *Id.* at 130-31. In contrast to *Briscoe*, however, the complaint in the instant case was sustained, and MSP cannot show that the release of public records pertaining to confirmed racial misconduct by public servants would be contrary to the public interest. The Court of Special Appeals erred in concluding that those distinctions made no difference.

The issue of whether a complainant, such as Ms. Dashiell, who has filed a sustained complaint of racial misconduct against her, may be considered a “person in interest” for the purposes of examining records of the investigation she initiated raises significant statutory construction and public policy questions concerning the interpretation and enforcement of the MPIA. This issue is particularly important given

(1) the MPIA's purpose of providing access to the public of documents concerning public actions by agents of the State and (2) the strong public interest in monitoring police misconduct and discipline, fostering public trust of the MSP's actions and promoting cooperation from complaining witnesses like Ms. Dashiell. This Court therefore should grant the cross-petition.

CONCLUSION

For the foregoing reasons, Respondent/Cross-Petitioner respectfully requests that the Court grant the Cross-Petition.

Dated: December 8, 2014

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY, on this 8th day of December 2014, that copies of the foregoing Respondent/Cross-Petitioner's Answer to Petition for Writ of Certiorari and Cross-Petition for Writ of Certiorari, were served by email and by overnight mail upon the following:

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